



State of Wisconsin  
Governor Scott Walker

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**Department of Agriculture, Trade and Consumer Protection**  
Ben Brancel, Secretary

**DATE:** November 13, 2013

**TO:** Board of Agriculture, Trade and Consumer Protection

**FROM:** Ben Brancel, Secretary  
Sandy Chalmers, Administrator, Trade and Consumer Protection Division

**SUBJECT:** Ch. ATCP 136; Mobile air conditioners, reclaiming or recycling refrigerant  
(Scope Statement)

**PRESENTED BY:** Judy Cardin and Staff

**REQUESTED ACTION:**

At the November 13, 2013 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a "Statement of Scope" (copy attached) for the promulgation of DATCP emergency and permanent rules related to mobile air conditioners; reclaiming or recycling refrigerant. Revision of the rule is necessary to harmonize the rule with federal law, reduce fees, and eliminate obsolete regulatory provisions. An emergency rule is needed so the department can eliminate fees and modify training requirements for the 2014 registration year.

A scope statement spells out the general purpose and scope of a proposed rule. DATCP may not begin drafting a proposed rule (including a proposal to amend or repeal an existing rule) until the Governor approves a scope statement for the proposed rule and the DATCP Board approves the scope statement. In accordance with 2011 Wisconsin Act 21 (s.227.135(2), Stats.), the Governor approved this scope statement for emergency and permanent rule changes on September 20, 2013, thereby allowing DATCP to submit this scope statement for publication and to seek approval of the scope statement by the DATCP Board.

DATCP must publish a draft scope statement in the Wisconsin Administrative Register, and file a copy with the Department of Administration (DOA), at least 10 days before the Board approves the scope statement. DATCP filed the attached statement of scope with the Legislative Reference Bureau for publication in the October 15, 2013 issue of the Wisconsin Administrative Register. DATCP also filed a copy with DOA.

The proposed emergency rule is a temporary rule change. An emergency rule goes into effect after it has been approved by the Secretary and the Governor and published in the state newspaper. If the Board approves the attached scope statement related to the emergency rule, then the Department will begin drafting the emergency rule. Once the rule is approved by the Secretary and Governor, it will be published in the state newspaper and become effective on the

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date of publication. An emergency rule remains in effect for 150 days. DATCP may request that the Joint Committee for Review of Administrative Rules (JCRAR) extend the length of time the emergency remains in effect for an additional 120 days.

If the Board approves the scope statement, the Department will also begin work to draft the permanent rule. Approval of a scope statement is just the first, preliminary step in a lengthy process for enacting permanent rules. The Board will have at least two further opportunities to review the proposed rule. The Board must approve a hearing draft rule before DATCP may hold public hearings on the rule proposal. The Board must also approve the final draft rule before DATCP may adopt the rule. The permanent rule will be effective when the final draft has been approved by the DATCP Board, approved by the Governor, completed the legislative review process and adopted by the Secretary.

# STATEMENT OF SCOPE

## Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Ch. ATCP 136, Wis. Adm. Code (Existing)

Relating to: Mobile Air Conditioners; Reclaiming or Recycling Refrigerant

### 1. Description of the objective of the rule:

This proposed rule and emergency rule would modify current trade and consumer protection rules related to mobile air conditioners. Currently, ch. ATCP 136, Wis. Adm. Code., requires businesses that install, repair or service mobile air conditioners to pay an annual registration fee and obtain an annual registration certificate from the department. The rule also requires businesses to register their mobile air service technicians, and for those technicians to successfully complete a department-approved training course or satisfy other training requirements.

DATCP proposes to eliminate the registration fee and streamline the registration and training requirements currently required under this rule. These modifications will harmonize DATCP's rule with federal requirements and reduce overall regulatory burdens by eliminating duplicative training and registration requirements. The department will also remove references to obsolete Department of Safety and Professional Services (DSPS) licensing requirements and make other minor modifications needed to ensure uniformity between the statute and rule. The proposed emergency rule would enable the fee reductions to take effect for the 2014 licensing year, which begins March 1, 2014.

### 2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

History and background. This rule, along with its enabling statute s. 100.45, Wis. Stats., regulates the sale and distribution of refrigerants used in motor vehicle air conditioners and trailer refrigeration equipment. It also requires businesses (such as automobile repair shops) and technicians who service this equipment to be registered with DATCP. Technicians must also complete a training course or satisfy other training requirements. In 2012, 3122 businesses holding 3602 licenses (160 businesses held more than one location license) and about 11,000 technicians registered with the department.

The 1989 enabling statute required the department to write rules to regulate the use of ozone-depleting refrigerants. DATCP promulgated the initial rule in 1990 and expanded the rule in 1995 to include registration requirements for technicians and used refrigerant brokers, control the sale and distribution of used refrigerant, and establish purity standards for reclaimed or recycled refrigerants. In 2000, the department modified the rule again to increase the registration fee for businesses engaged in repairing and servicing mobile air conditioners and trailer refrigeration equipment, eliminate references to "used refrigerant broker", and regulate the use of substitute refrigerants. Technical changes to the rule were made in 2009 and also are currently being promulgated. The most recent technical rule changes will align the rule with 2011 statutory changes repealing the ban on selling containers holding less than 15 pounds of refrigerant ("small can ban").

As a result of the 2011 statutory changes, Wisconsin's regulations are now consistent with EPA requirements and the EPA-approved training program should meet Wisconsin's training needs.

In 2013, the legislature repealed requirements that refrigerant technicians be certified by DSPS. These former licensing requirements are housed in DSPS 305.72, and referenced in ATCP 136. This rulemaking will modify the rule to remove references to those requirements.

#### Nature of the Emergency

An emergency rule is necessary because the registration fee and training requirements are unnecessary expenses and regulations that affect the welfare of business and industry. Permanent rules cannot be adopted in time to eliminate the fee and training requirements for the 2014 registration year. The emergency and permanent rules will have similar provisions.

Proposed policies. DATCP proposes to streamline the annual registration requirements and eliminate the annual registration fee for operators of mobile air conditioner repair or service businesses. In addition, DATCP proposes to designate the technician training course approved by the EPA under 40 CFR 82.40 as a department-approved course. DATCP also proposes to modify the rule to remove outdated references and make any other minor revisions that may be necessary to harmonize the statute and rule. The proposed emergency rule would allow these changes to take effect for the 2014 licensing year.

Policy Alternatives. The department could maintain the existing registration requirements and fees for operators of mobile air conditioner repair and service businesses. Alternatively, the department could reduce the annual registration fee, but not eliminate it. In addition, the department could continue to require additional Wisconsin-specific training for technicians. The department also could skip the emergency rule, which would keep existing fees and training requirements in effect until the permanent rule is promulgated.

#### **3. Statutory authority for the rule (including the statutory citation and language):**

Sections 93.07 (1), s. 100.45 (5)

**93.07 Department duties.** It shall be the duty of the department:

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

\* \* \*

#### **S. 100.45 Mobile air conditioners**

(5) DEPARTMENT DUTIES. The department shall do all of the following:

(a) Promulgate rules for the administration of this section including establishing all of the following:

1. A standard of purity for recycled refrigerant from mobile air conditioners that is based on recognized national industry standards.
2. Qualifications, which may include training or certification requirements, for individuals who use approved refrigerant recycling equipment or approved refrigerant recovery equipment to ensure that those individuals use procedures for containment of ozone-depleting refrigerant.
3. Fees to cover the costs of administering this section.

**4. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:**

DATCP estimates that it will use approximately 0.25 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

**5. Description of all entities that may be impacted by the rule:**

Approximately 3600 mobile air conditioning repair and servicing businesses and 11,000 technicians will be impacted by the rule. The proposed streamlined registration requirements, reduced fees, and expanded training options will save both technicians and their employers time and money, and have a positive financial impact on those businesses.

Wisconsin technical colleges may also be impacted by the rule. Currently, the technical colleges are the major provider of the DATCP-required technician training. If the EPA-approved course is automatically considered to be "department-approved," attendance at the technical colleges' training courses may decline. Technicians could still choose to attend training provided by the technical colleges if they and their employers find it value-added. Technical colleges may also become authorized to provide EPA-approved training.

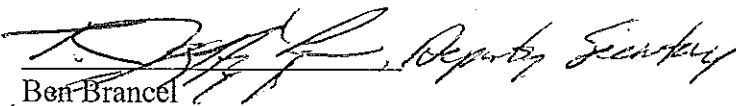
**6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:**

At the national level, the EPA requires technicians to be trained and certified by an EPA-approved organization. The training must cover specific content areas, and technicians must pass a test demonstrating competency to be certified. Under the current DATCP rule, the EPA-approved course does not automatically meet the DATCP training standards. Therefore, a technician seeking certification in Wisconsin--who has already successfully completed the EPA approved course--must also (in most circumstances) complete a DATCP-approved course. Under the proposed rule revision, a technician who completes the EPA-approved course would meet the DATCP training requirements.

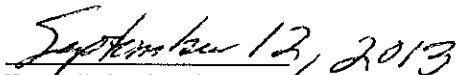
**7. Anticipated economic impact**

DATCP expects the proposed rule and emergency rule to have a positive economic effect on mobile air conditioning businesses. By eliminating the registration fee, approximately 3600 licensed locations will save \$120 per registered location, or about \$420,000 statewide. In addition, by removing the duplicative training requirement, technicians (or their employers) will only be required to pay for and attend one training course, saving an unknown amount of time and money.

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for Ben Brancel  
Secretary

Department of Agriculture, Trade and Consumer Protection

  
Date Submitted

